United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 18,576

631

COLUMBUS EDWARDS,

Appellant

v.

UNITED STATES OF AMERICA,

Appellee

APPEAL IN FORMA PAUPERIS FROM JUDGMENT OF CONVICTION
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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(Appointed by the Court)

STATEMENT OF QUESTIONS PRESENTED

1. The question is whether in a trial upon an indictment for robbery, the court erred in admitting into evidence a colored photograph of the defendant taken shortly after his arrest, while he was in custody.

2. The question is whether in a trial upon an indictment for robbery, there was a lawful arrest based upon probable cause.

3. The question is whether in a trial upon an indictment for robbery, the court should direct an acquittal if the Government did not sustain its burden of proof sufficient to make a prima facie case on the facts presented.

UNITED STATES COURT OF APPEALS
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BRIEF FOR APPELLANT

I N D E X

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JURISDICTIONAL STATEMENT

The United States District Court for the District of Columbia had jurisdiction pursuant to the provisions of Title 11-305, 306, District of Columbia Code, 1961 Edition.

Appellant was convicted of robbery on December 10, 1962, and sentenced on June 25, 1963, in the United States District Court for the District of Columbia.

This Court has jurisdiction pursuant to the provisions of Title 11-101, 102, District of Columbia Code, 1961 Edition.

STATEMENT OF POINTS

Below listed are the errors upon which appellant in this appeal desires to rely:

1. Admission of a colored slide into evidence over objection, (a) which was not verified as to accuracy; (b) was without proper foundation for its admission; (c) was a violation of the defendant s right to self-incrimination; (d) was cumulative and corroborative of previous testimony; and (e) had no probative value and therefore was irrelevant.

2. There was an unlawful arrest as probable cause was lacking

3. The court erred in refusing to grant defense counsel s motion for acquittal at the conclusion of the Government s case. Further, the verdict of the jury was contrary to the weight of the evidence and based on speculation and conjecture.

SUMMARY OF ARGUMENT

It is respectfully submitted that prejudicial error in the trial of the appellant upon an indictment of robbery denied him a fair trial for the following reasons

I

After the two Government witnesses testified and identified the defendant as the perpetrator of the alleged robbery, the Government, over the objection of defense counsel, was allowed to introduce into evidence, through a police officer, a colored photographic slide purportedly showing the defendant after his arrest and while in custody. The photographic slide depicted a full length, colored picture of the defendant in a dishevelled condition, portrayed him in an unfavorable light, and included a number. Appellant contends that the defendant was highly prejudiced by this evidence which was viewed by the individual jurors as it was admitted without a proper foundation being laid, was violative of the defendant's constitutional right against self-incrimination, was cumulative and corroborative evidence, was irrelevant to the issues, and planted the idea of "criminal" in the minds of the jury.

II.

Further, appellant contends that there was an unlawful arrest as probable cause was lacking. Two witnesses made the identification after the arrest, the police did not witness the crime, a search of the defendant's person did not reveal the alleged weapon nor the fruits of the crime and the defendant denied his guilt and offered an alibi which was not checked out by the arresting officers. Further, defense counsel was denied the opportunity by the trial court to inquire of the police the defendant's answer to their interrogation at the scene.

III.

Thirdly, appellant contends that the Government did not sustain its burden of proof and therefore the court should have directed a verdict of acquittal. Its failure to do so resulted in a verdict by the jury contrary to the weight of the evidence and based on speculation.

ARGUMENT

I.

With respect to Point I, appellant desires the Court to read the following pages of the reporter's transcript. Tr. 81 - 86 inclusive.

After the testimony of two eye-witnesses to the alleged crime, the jury was allowed to view a colored slide purporting to show the defendant after the arrest and while in custody. The witnesses testified that the defendant had changed his pants and shirt and had removed his mask between the time the crime allegedly occurred and the time of arrest Appellant contends that the exhibiting of this color photographic slide to the jury was extremely prejudiced, as it planted the seed of "criminal". The photograph served no useful purpose and therefore had no probative value and was irrelevant evidence. The color photograph did not depict the defendant as he was at the time of the alleged crime and was not used in any way: (1) to assist the witness in giving his testimony, or (2) to assist the jury in understanding the case. Jones, The Law of Evidence, pp. 1189-90. It was just inserted over objection and showed a disheveled prisoner, his clothes messed, hair unruly, shoes untied and

an identification number. This certainly did not favor the defendant and as a matter of fact most surely must have had an adverse effect on the jurors so perusing it, all for no legitimate evidenciary purpose.

The general rule is that photographs are admissible wherever they assist the jury in understanding the case. If a photograph does not furnish any aid to the jury in determining any issue in the case, it should be excluded. Scott, Photographic Evidence, pp. 479-80.

Further on page 551 of the above volume the author stated:

> "Where the appearance of a person present in the court has changed so that witnesses who saw him at a previous time failed to recognize him at the trial, a photo duly verified as showing how he appeared at the time in controversy is admissible for the purpose of enabling such witness to identify him." [Empnasis supplied]

Appellant argues that here the eye-witnesses were not shown the photograph, nor was it used by them in any way, and further, they recognized and identified the defendant as the alleged perpetrator of the crime so there was no reason for its admission.

Photographs are generally inadmissible as original evidence and they must be sponsored by a witness whose testimony they usually serve to explain and illustrate. Richardson, Modern Scientific Evidence, p. 405.

Again appellant recites from Scott, an exhaustive treatise on this subject, in which the author states at pp. 557-8

> "One type of picture which obviously puts the subject's character in issue is the rogue's gallery photograph bearing identification number and a prison record. The general rule is that when the defendant's character is not in issue the state should not be allowed to introduce in evidence a photograph of the defendant which shows on its face it is a rogue's gallery photograph. Several cases hold that the nature of a rogue's gallery photograph is effectively kept from the jury if the number and prison record thereon are covered before the photograph is admitted into evidence. However, in a recent case it was held prejudicial error to admit in evidence a prison photograph of the defendant having the numbers and prison record covered with paper, the court ruling that this was not sufficient to prevent a juror of average intelligence from at least strongly suspecting that the defendant had a criminal record."

Appellant cites this as an example of the fact that there is an awareness by some that such "mug-shots" have an adverse effect on the defendant. The two cases below illustrate this

In People v Swanson, 278 App.Div., 846, 104 N.Y S.2d 400 (1951), a sodomy prosecution, the complainants could not identify the defendant as to a photograph. The court stated.

> "During the trial there was received in evidence, as tending to identify defendant as the criminal, photographs of defendant taken after his arrest and while he was in custody. Under the circumstances described, the admission of this evidence was erroneous and highly prejudicial."

Recently in Bates v. State, 40 Ala. App. 549, 117 S.2d 255 (1960), the defendant was being prosecuted for unlawfully manufacturing whiskey and the admission of a photograph of the defendant, handcuffed to an officer, was held to be prejudicial error. The court in its opinion commented on another reason why this photograph should have been excluded. It said that the admission constituted a violation of the defendant's rights secured by the constitutional prohibition against a person being compelled to give evidence against himself, as the defendant had not been advised as to his right against self-incrimination.

Granted the general rule is as stated in 8 Wigmore, § 2263, that self-incrimination is limited to testimonial compulsion. However, appellant asserts that physical evidence can be more damaging to his defense.

Finally, appellant argues that the essential steps for introduction of the photograph into evidence as set forth generally in Scott, page 757, and the laying of a proper foundation were lacking in the instant case and the photograph should have been excluded. By excluding the photograph the Government would have lost nothing; admitting the photograph cost the defendant everything.

II

With respect to Point II, appellant desires the Court to read the following pages of the reporter's transcript Tr. 10, 11, 12, 13, 17, 15, 23 - 29 inclusive, 32, 37, 38, 42 - 52 inclusive, 57, 58, 59, 65, 66, 72 - 88 inclusive.

In Kelly v. United States, 111 U.S.App.D.C. 396, 298 F 2d 310 (1961), this Court said:

> "It [the arrest] is sufficient if the person arrested understands that he is in the power of the one arresting and submits in consequence. Since the defendant in Kelly was a convicted felon (as here) he was particularly susceptible to the atmosphere of restraint created by the police."

In this instance Officer Dolinger admitted he arrested the defendant across the street after talking to Mr. Davis (Tr. 72). Appellant contends a reasonably prudent police officer should have realized he did not have probable cause as set forth in Bell v. United States, 102 U.S.App D.C 353, 254 F.2d 82 (1959). Why? The defendant was across the street, in the area of the crime, talking to several other persons in changed clothes, when Mr. Davis supposedly identified him, even though before the arrest the alleged gunman was thought to be a woman and had on a mask. After the arrest, and after further questioning,

then Mr. Davis repeated his accusation and Mr. Cornwald rubber-stamped it. It is to be pointed out no lineup identification was used, the defendant was simply pulled out of a group who were not even questioned individually. Was this arrest lawful and the probable cause reasonable? The appellant thinks not.

As Frank, in Not Guilty, (1957) at p. 31 observes:

> "Perhaps erroneous identification of the accused constitutes the main source of known wrongful convictions."

III

The court should have directed a verdict of acquittal after reviewing the facts as to the identification and how it was made; noting no gun, mask nor money was found; the alibi was not checked; and no confession was made. This certainly indicated the Government had not proved its case beyond a reasonable doubt. To do otherwise was to allow the jury to speculate as to the guilt or innocence of the accused.

CONCLUSION

The appellant respectfully submits that for the foregoing reasons this Honorable Court should reverse the verdict in the lower court.

Respectfully submitted,

/s/ Anthony E. Grimaldi

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6-18-64
①

BRIEF FOR APPELLEE

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,576

COLUMBUS S. EDWARDS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
HAROLD H. TITUS, JR.,
GERALD E. GILBERT,
Assistant United States Attorneys.

QUESTIONS PRESENTED

In the opinion of the appellee, the following questions are presented:

1) Was it error for the court to admit appellant's photograph taken at the time of his arrest where the evidence showed that appellant's appearance at trial had changed from the time of his arrest?

2) Was there sufficient probable cause for appellant's arrest where the arresting officer had a full description of the robbery and a positive identification of the appellant?

3) Was the evidence sufficient to sustain appellant's conviction of robbery?

I N D E X

TABLE OF CASES

OTHER REFERENCES

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* Cases or authorities chiefly relied upon are marked by asterisks.

UNITED STATES COURT OF APPEALS
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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant was indicted on one count of robbery on September 24, 1962. He was tried by jury on December 17, 1962, and the jury returned a verdict of guilty on December 18, 1962. On January 25, 1963, appellant was sentenced to three to nine years imprisonment.

The government's evidence showed the following: Charles Cornweld testified that on August 11, 1962, at about five minutes to three in the afternoon, someone knocked at his apartment door at 1324 Monroe St., N. W. At that time he was being visited by a friend Robert Davis, and they were just approaching the door as Davis was preparing to leave. When Cornweld opened his door there was a tall, brown skinned boy with heavy eyelashes and a mustache who was standing at the entrance. Cornweld asked him what he was looking for and the boy mumbled something and pushed on by Cornweld. Davis was walking out of the apartment at that moment. At that point another fellow approached Cornweld

with a revolver in his hands and told Cornweld to give him all of his money. The man with the gun had a silk stocking mask on his head coming down to near the top of his nose. Both Cornweld and Davis got a good look at the masked man. (Tr. 4-7, 10-11, 41-43, 68,) Cornweld told the robbers that all of his money was on the table (Tr. 8). The masked man ordered the other person with him to take the money from the table. The tall man picked up a ten dollar bill and a quarter from the table. The masked man asked for more money and threatened Cornweld, and then the intruders left. (Tr. 9-10.) The masked man was the one with the gun and did all of the talking. Cornweld said that he could remember the man with the mask and gun by his teeth which had kind of a gap in them, and also by the way the man spoke. The masked man had no mustache and was about five feet four or five inches tall. (Tr. 10-11, 12, 27, 35, 45). Cornweld identified the appellant as being the masked man. Appellant had a full head of long hair with a process on it and did not have a mustache on the day of the robbery (Tr. 11, 48). The appellant was wearing a long sleeved powder blue shirt and dark pants and tan shoes at the time of the robbery, however later at the time he was arrested he was wearing a short sleeve lighter blue shirt (Tr. 14, 44). Davis continued walking on out of the apartment building after he had seen the robbers and heard them demand money from Cornweld (Tr. 43). Davis got into his car, started down Monroe Street and turned left on Holmead Street. At that time which was about ten minutes after Davis had first seen the robbers, Davis again saw the appellant (who had taken off the stocking cap) and the tall, light skinned boy as they were coming out of the side street exit of Mr. Cornweld's apartment building. (Tr. 45). Davis positively identified the appellant as the man with the stocking cap and the same one he saw leaving the complainant's apartment building (Tr. 46-47). Davis went to

look for an officer and was unable to find one. He went back to the apartment building and discovered that Mr. Cornweld had called the police (Tr. 14, 15, 49). After the police responded Cornweld and Davis described to them what they had seen and what happened concerning the robbery (Tr. 16-17, 25, 33, 50, 59). Later that afternoon at about 5:45 p.m. Cornweld and Davis were still talking to the police officers in front of Cornweld's apartment building when the appellant appeared on the other side of the street. Davis told an officer about the appellant being across the street and pointed him out, and told them appellant was their man. The officer went across the street and talked with the appellant and brought him back to where Cornweld was standing. Cornweld recognized the appellant and identified him as one of the men who had robbed him. Cornweld said that he recognized him by his voice. Cornweld said that he identified the appellant after Davis had pointed the appellant out to the police. (Tr. 17, 18, 33, 50-52, 67).

Detective Sergeant Ancel Dolinger testified that he and his partner, Detective Samen, arrived on the scene at 1324 Monroe St. N. W., on August 11, 1962, at about 4:15 or 4:30 p.m. He talked with both Mr. Davis and Mr. Cornweld. (Tr. 70-71). After talking with Davis and Cornweld they cruised the area and cruised back in front of the apartment building at about 5:45 p.m. At that time they were called by Mr. Davis, and as a result of talking to Mr. Davis they arrested the appellant who was standing in front of 1341 Monroe Street talking with four or five other people. Mr. Davis and Mr. Cornweld both identified the appellant at the time of his arrest. (Tr. 72, 73, 77).

Detective Charles Samen testified that after appellant was arrested which was about 5:45 p.m. the appellant was taken back to the robbery squad. Samen said that in his presence a photograph was taken at about 7 or 7:15 p.m.

by the identification bureau and he gave that photograph to the prosecutor (Tr. 82-83). At that point defense counsel told the court that he thought the photograph was corroborative of what had already taken place, and what the witnesses had already given, and said that he believed it would prejudice the appellant's case. The court stated that it might be corroborative but the court thought it was admissible (Tr. 84). The prosecutor moved the photograph into evidence. The court said that there being no objection it would be received. There was no objection and the photograph was received into evidence. Detective Samen said the photograph represented the appellant's physical appearance at the time he was arrested (Tr. 85).

Othello Epps, appellant's mother testified in his behalf. She said that she had not seen the appellant for a long time and was getting ready to put him on the missing persons list when she found out that he was in jail (Tr. 90). After talking to the appellant in jail she went to visit Mr. Cornweld. She said that Mr. Cornweld told her that he did not know her son, and did not know who robbed him, and that his friend Bobby said that it was her son who was one of the robbers. (Tr. 92-93). Mrs. Epps said that she did not visit Mr. Davis after learning that it was he who said that appellant had robbed Mr. Cornweld. She hadn't seen the appellant for months before seeing him in jail and did not know where he was living on August 11, 1962 (Tr. 93).

Defense counsel mentioned to the court that he should have made a motion for a directed verdict at the close of the government's case. The court denied the motion stating that there were sufficient facts for the case to go to the jury. (Tr. 94).

Appellant testified in his own behalf. When the police apprehended him he told them that he was there to see a fellow by the name of Swifty about

a job and Swifty wasn't home (Tr. 96). The officers told the appellant that they wanted him for robbery and he told them that they had the wrong man. The officers questioned some of the people in the neighborhood including the girl with whom appellant had spent the night (Tr. 97). Appellant told the police he didn't commit any robbery, and they said that he did and wanted to know where his buddy was. Appellant said that when Mr. Cornweld was asked if appellant was the man who robbed him, Cornweld said that he didn't know and that the robber had a Spanish accent (Tr. 98). When appellant arrived at police headquarters his photograph was taken (Tr 99). Appellant said he is five feet six inches tall (Tr. 100). At 3:00 p.m. on August 11, 1962 he was coming from Fairmount Street where he had been drinking with some guys. He arrived at Swifty's at about 20 minutes to 4:00 and had been there about 35 minutes when the police arrived. (Tr. 101). Appellant was wearing a blue shirt, black pants and a pair of tennis shoes at the time he was arrested, and he said that he was wearing them all that day (Tr. 102). Appellant said that he had a processed hairdo and no mustache at the time of his arrest (Tr. 104). He said that he didn't speak any foreign languages (Tr. 105). On cross examination appellant stated that he was 26 years old, did not have a job on August 11, 1962, and had no money on that date (Tr. 106). He had been convicted of burglary in 1957, carrying a deadly weapon in 1960, and simple assault in 1961 (Tr. 107-108). Appellant did not know Swifty's last name nor his address but he knew where his house was on Monroe Street (Tr. 108). None of the people appellant was talking with when he was arrested were in court. Appellant said that they had moved away from where they were staying. (Tr. 110). Appellant had been drinking all day long on August 11, and his friends had been buying all of his drinks (Tr. 111, 112).

Defense counsel then asked the appellant several questions concerning the whereabouts of people whose names appellant had mentioned. Defense counsel told the court that the reason for these questions was that he was unable to locate any of those people and they were known only by nicknames. Appellant said that he had given a man from the Legal Aid Agency some names and addresses but it turned out that they were incorrect. (Tr. 113-117).

A motion for a directed verdict of acquittal was denied (Tr. 118).

The jury retired to deliberate at 10:50 a.m. on December 18, 1964, and returned a verdict of guilty 55 minutes later (Tr. 129).

STATUTE INVOLVED

Title 22, District of Columbia Code, Section 2901, provides.

> Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years.

SUMMARY OF ARGUMENT

Appellant's photograph which was taken at the time of his arrest was introduced at trial through a detective who was present at the time the photograph was taken. The detective testified as to the time place, and circumstances in which the photograph was taken. The court did not abuse its discretion in deciding there was sufficient authenticity to admit the photograph. Any impropriety whatsoever was certainly cured by the detective's subsequent testimony that the photograph represented the appellant's physical appearance at the time of his arrest. There was testimony showing that appellant had long hair and no mustache at the time of his arrest which was just a short time after the robbery, however at trial appellant had short hair and a mustache. The admissibility of a photograph in such a situation is beyond question, and is not a violation of an accused's constitutional rights. The appellant fails to show how the use of the photograph was prejudicial to him. In any event there was only a general objection before the photograph was introduced, and no objection when it was offered into evidence, and it is not now grounds for error.

The appellant fails to show that he was prejudiced by his arrest without a warrant. There were no motions to suppress any of the evidence and no record specifically involving the issue of probable cause. However, it is quite evident from the record as it is that a full description of the robbery and the appellant by the complainant and an eyewitness followed by a positive identification of the appellant by the eyewitness gave the arresting officer substantial probable cause for the appellant's arrest.

The government's evidence established every element of robbery and there were two positive identifications of the appellant as being one of the robbers. The appellant's argument on insufficiency of the evidence is without merit.

ARGUMENT

I. Appellant's photograph was properly admitted into evidence.

(See Tr. 11, 48, 82-85, 104)

A photograph is admissible when it is shown to be a correct likeness of the persons or objects which it purports to represent. The photographer is not the only witness competent to prove the likeness. On the contrary, that fact may be shown by the testimony of any witness familiar with the original of the object which the photograph portrays. Barney v. Staten Island Rapid Transit Railway Company, 316 F.2d 38, 43 (3d Cir. 1963); Kortz v. Guardian Life Ins. Co., 144 F.2d 676, 679 (10th Cir. 1944), cert. denied, 323 U.S. 728; Boyle v. Ward, 39 F.Supp. 545, 548-549 (D.C.M.D. Pa. 1941), aff'd 125 F.2d 672 (3d Cir. 1942). 3 Wigmore Evidence § 792(3), 793, 794 (3d. ed 1940).

Detective Charles Samen testified that after appellant was arrested at approximately 5:45 he and his partner took the appellant to the robbery squad. At about 7:00 or 7.15 p.m. a photograph was taken of the appellant by the Identification Bureau, Police Headquarters, in Detective Samen's presence. Detective Samen produced that photograph at trial, along with a photo viewer. (Tr. 82-83). The photograph and photo viewer were received into evidence. (Tr. 85).

The question of whether authenticity of a document has been sufficiently proved prima facie to justify its admission rests in the sound discretion of the trial judge. Arena v. United States, 226 F.2d 227 (9th Cir.), cert. denied, 350 U.S. 954 (1955). In this case the Detective was qualified by observation to speak of the matter represented in the picture and he testified as to the time, place and circumstances in which the photograph was taken. It was not an abuse of discretion to allow the photograph into evidence. Any error

whatsoever was certainly cured by the detective's testimony immediately following the admission of the photograph that it represented the appellant's physical appearance at the time he was arrested. (Tr. 85).

Whether the admission of a photograph such as the one in this case violate an accused's constitutional right against self-incrimination was decided a long time ago by this Court in Shaffer v. United States, 24 App. D.C. 417 (1904). The facts in Shaffer, a capital case, were very similar to the facts in the present case concerning the admissibility of a photograph. There was evidence in the Shaffer case tending to prove that prior to the homicide the accused wore no beard, that he wore no beard when a photograph was taken of him at the police station, but that during the trial, he wore a full beard. In affirming the conviction which carried a death penalty this Court said that there had been no pretense that there was excessive force or illegal duress employed to take the picture, and the use of the picture at trial was not a violation of any constitutional right. See also United States v. Amorosa, 167 F.2d 596 (3rd Cir. 1948); United States v. Nesmith, 121 F.Supp. 758 (1954).

The fact that photographic evidence may be cumulative is not alone ground for its rejection. Potts v. People, 114 Colo. 253, 158 P.2d 739 (1945). The value of the use of a photograph as a witness' pictured expression of the data observed by him and a more accurate reflection than words is sanctioned beyond question. Shaffer v. United States, supra; 3 Wigmore Evidence § 792 (3d ed. 1940). There was testimony in the instant case that the appellant had long hair and no mustache at the time of the robbery and when he was arrested, however, at trial the appellant had short hair and a mustache. (Tr. 11, 48). In fact, the appellant himself took the stand and testified that he had a processed hairdo, and no mustache at the time he was arrested (Tr. 104). In view

of the testimony and what the photograph represented, the appellant fails to show any prejudice by the use of the photograph.

In any event the only objection by defense counsel to the use of the photograph was a general objection before the prosecutor had moved the photograph into evidence, and that was based on the grounds that the photograph was corroborative of what had already taken place, and what the witness said. Defense counsel believed it would prejudice appellant's case. The court replied that it might be corroborative but admissible. At that time the prosecutor offered the photograph into evidence. The court said that there being no objection it would be received (Tr. 84-85). There was no objection, and it is not now grounds for reversal. Thomas v. United States, supra; Lawson v. United States, supra.

II. There was sufficient probable cause for appellant's arrest without a warrant.

(See Tr. 4-7, 10-11, 15-18, 25, 33, 41-43, 45-47, 50-52, 59, 67-68, 84-85)

Appellant contends that he was unlawfully arrested without a warrant because the arresting officer had no probable cause to believe that he had committed a felony. However, appellant fails to show how he was prejudiced by the arrest. There were no motions to suppress any of the evidence. The only tangible evidence actually introduced at trial was appellant's picture (slide) which was taken at the time of his arrest, and a slide viewer. There was a general objection to the use of the picture on the grounds that it was merely corroborative, however, the picture eventually was received into evidence without objection (Tr. 84-85).

Assuming arguendo that the picture was taken illegally, it is not grounds for reversal where no motion was made for suppression of the picture, no objection was taken to its admission and no foundation laid for such motion or objection. Thomas v. United States, 106 U.S. App. D.C. 5, 268 F.2d 581 (1959); Lawson v. United States, 101 U.S. App. D.C. 332, 248 F.2d 654 (1957).

Even giving appellant the benefit of a motion which was never made, there was sufficient probable cause to uphold the arrest as lawful in this case. Both the complainant Mr. Charles Cornweld and an eyewitness Mr. Robert Davis saw the appellant wearing a silk stocking mask which partially covered his face during the robbery. Appellant's accomplice

was a tall brown-skinned boy who had heavy eye lashes and a heavy mustache (Tr. 4-7, 10-11, 41-43, 68). About ten minutes after seeing the robbery, Mr. Davis who was able to leave the building just as the robbery commenced again saw the appellant (who had taken off his stocking cap) and his accomplice as they were coming out of the side street exit of the complainant's apartment building (Tr. 45-47). Mr. Cornweld called the police and they responded to the scene within five minutes (Tr. 15). Mr. Cornweld and Mr. Davis described to the arresting officer what had happened concerning the robbery (Tr. 16-17, 25, 33, 50, 59). Cornweld and Davis were talking to the officers in front of Cornweld's apartment building about two and one half hours after the robbery and were discussing the robbery when Davis saw the appellant across the street. Davis identified the appellant as one of the robbers and pointed him out to the arresting officer (Tr. 17-18, 33, 50-52, 67). At this point there was probable cause for the officers to believe that a felony had been committed and the appellant was one of those who had committed it. One of the officers went over to the appellant and asked him a few questions, after which the officer and appellant both came back across the street where Mr. Cornweld also positively identified the appellant as being one of the robbers (Tr. 33).

Probable cause exists where "the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed. Brinegar v. United States, 338 U.S. 160, 175 (1949). If the

circumstances existing at the moment of arrest, considered in their entirety, would impress on the mind of a prudent and cautious police officer a reasonable belief that a crime has been, is being, or is about to be committed, the arrest is deemed lawful. Dixon v. United States, 111 U.S. App. D.C. 305, 306-307, 296 F.2d 427, 428-429 (1961); Ellis v. United States, 105 U.S. App. D.C. 86, 88, 264 F.2d 372, 374 (1959), cert. denied, 359 U.S. 998; Bell (Rhinelda) v. United States, 102 U.S. App. D.C. 383, 387, 254 F.2d 82, 86 (1958), cert. denied, 358 U.S. 885.

Certainly a detailed description of a robbery and a positive identification by an eye witness less than three hours after the crime, such as occurred in the instant case, is at least sufficient probable cause for a reasonable police officer to arrest that man who is identified as the robber.

This case is similar to Payne v. United States, 111 U.S. App. D.C. 94, 294 F.2d 723, cert. denied 368 U.S. 882 (1961), where this Court held that there was probable cause when officers arrested a defendant as he was attempting to leave in an automobile after a citizen had pointed him out as the principal culprit in an attempted "flim flam." See also Paris v. United States. 116 U.S. App. D.C. 112, 321 F.2d 378 (1963).

III. The evidence was sufficient to sustain the verdict.

(See Tr. 4-12, 17-18, 25, 33, 41-43, 45-48, 50-52, 59, 67-68, 72)

Appellant argues that the government's evidence was insufficient to make a prima facie case. The government's evidence revealed that the appellant and a tall boy who was his accomplice came to the complainant's apartment. Appellant was wearing a stocking mask which partially covered his face and pointed a revolver at the complainant. Appellant demanded money and ordered his accomplice to take a ten dollar bill and a quarter from the complainant's table inside of the apartment, which was done. The appellant then demanded more money and threatened the complainant. (Tr. 4-12). An eyewitness Mr. Robert Davis was just leaving the complainant's apartment when the appellant and his accomplice arrived. Mr. Davis continued on out of the apartment building but he had been able to get a good look at the appellant and heard the appellant demand money from the complainant (Tr. 41-43, 68). About ten minutes after Mr. Davis left the complainant's apartment, he saw the appellant (who had removed the stocking mask) and his accomplice as they were leaving through the side exit of the complainant's apartment building (Tr. 45-47). Appellant was wearing a processed hair-do and had no mustache (Tr. 48). The police responded to the complainant's call and the complainant and Mr. Davis described what had happened (Tr. 25, 33, 50, 59). About two and a half hours after the robbery, Mr. Davis spotted the appellant across the street from the complainant's apartment building and pointed him out to a police officer (Tr. 50-52). Davis positively identified appellant as the person

he had seen at the complainant's apartment wearing a mask, and again as he was leaving complainant's apartment without a mask (Tr. 46-47). The complainant positively identified the appellant as being the masked robber and said he recognized the appellant from his teeth and funny way of talking (Tr. 17-18, 33, 50-52, 67). At the time of his arrest appellant had long processed hair and no mustache (Tr. 72).

The principles by which the legal sufficiency of evidence in criminal cases is tested on appeal require that a judgment of conviction be sustained, if, taking the view most favorable to the government and giving full play to the right of the jury to determine credibility and draw justifiable inferences of fact, a reasonable man might fairly conclude guilt beyond a reasonable doubt. Glasser v. United States, 315 U.S. 60 (1942); Curley v. United States, 81 U.S. App. D.C. 389, 160 F.2d 229, cert. denied, 330 U.S. 837 (1947); Morton v. United States, 79 U.S. App. D.C. 329, 147 F.2d 28, cert. denied, 324 U.S. 875 (1945). Applying these standards it is evident that the testimony of the government's witnesses was quite sufficient to support the conviction of robbery. Appellant's argument is without merit.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

/s/ DAVID C. ACHESON,
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/s/ FRANK Q. NEBEKER,
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/s/ HAROLD H. TITUS, JR.,
HAROLD H. TITUS, JR.,
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/s/ GERALD E. GILBERT,
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Assistant United States Attorney.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing mimeographed brief for appellee has been mailed to attorney for appellant, Anthony E. Grimaldi, Esq., 3600 M Street, N.W., Washington, D. C. 20007, this 12th day of June, 1964.

/s/ GERALD E. GILBERT,
GERALD E. GILBERT,
Assistant United States Attorney.

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,576

COLUMBUS S. EDWARDS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

---

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
HAROLD H. TITUS, JR.,
GERALD E. GILBERT,
Assistant United States Attorneys.

QUESTIONS PRESENTED

In the opinion of the appellee, the following questions are presented:

1) Was it error for the court to admit appellant's photograph taken at the time of his arrest where the evidence showed that appellant's appearance at trial had changed from the time of his arrest?

2) Was there sufficient probable cause for appellant's arrest where the arresting officer had a full description of the robbery and a positive identification of the appellant?

3) Was the evidence sufficient to sustain appellant's conviction of robbery?

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TABLE OF CASES

OTHER REFERENCES

* Cases or authorities chiefly relied upon are marked by asterisks.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant was indicted on one count of robbery on September 24, 1962. He was tried by jury on December 17, 1962, and the jury returned a verdict of guilty on December 18, 1962. On January 25, 1963, appellant was sentenced to three to nine years imprisonment.

The government's evidence showed the following: Charles Cornweld testified that on August 11, 1962, at about five minutes to three in the afternoon, someone knocked at his apartment door at 1324 Monroe St., N. W. At that time he was being visited by a friend Robert

Davis, and they were just approaching the door as Davis was preparing to leave. When Cornweld opened his door there was a tall, brown skinned boy with heavy eyelashes and a mustache who was standing at the entrance. Cornweld asked him what he was looking for and the boy mumbled something and pushed on by Cornweld. Davis was walking out of the apartment at that moment. At that point another fellow approached Cornweld with a revolver in his hands and told Cornweld to give him all of his money. The man with the gun had a silk stocking mask on his head coming down to near the top of his nose. Both Cornweld and Davis got a good look at the masked man. (Tr. 4-7, 10-11, 41-43, 68.) Cornweld told the robbers that all of his money was on the table (Tr. 8). The masked man ordered the other person with him to take the money from the table. The tall man picked up a ten dollar bill and a quarter from the table. The masked man asked for more money and threatened Cornweld, and then the intruders left. (Tr. 9-10.) The masked man was the one with the gun and did all of the talking. Cornweld said that he could remember the man with the mask and gun by his teeth which had kind of a gap in them, and also by the way the man spoke. The masked man had no mustache and was about five feet four or five inches tall. (Tr. 10-11, 12, 27, 35, 45). Cornweld identified the appellant as being the masked man. Appellant had a full head of long hair with a process on it and did not have a mustache on the day of the robbery (Tr. 11, 48). The appellant was wearing a long sleeved powder blue shirt and dark pants and tan shoes at the time of the robbery, however later at the time he was arrested he was wearing a short sleeve lighter blue shirt (Tr. 14, 44). Davis continued walking on out of the apartment building after he had seen the robbers and heard them demand money from Cornweld (Tr. 43). Davis got into his car, started down Monroe Street and turned left on Holmead Street. At that time which was about ten minutes after Davis had first seen the robbers, Davis again saw appellant (who had taken off the stock-

ing cap) and the tall, light skinned boy as they were coming out of the side street ~~east~~ East of Mr. Cornwald's apartment building. (Tr. 45). Davis positively identified the appellant as the man with the stocking cap and the same one he saw leaving the complainant's apartment building (Tr. 46-47). Davis went to look for an officer and was unable to find one. He went back to the apartbuilding and discovered that Mr. Cornweld had called the police (Tr. 14, 15, 49). After the police responded Cornweld and Davis described to them what they had seen and what happened concerning the robbery (Tr. 16-17, 25, 33, 50, 59). Later that afternoon at about 5:45 p.m. Cornweld and Davis were still talking to the police officers in front of Cornweld's apartment building when the appellant appeared on the other side of the street. Davis told an officer about the appellant being across the street and pointed him out, and told them appellant was their man. The officer went across the street and talked with the appellant and brought him back to where Cornweld was standing. Cornweld recognized the appellant and identified him as one of the men who had robbed him. Cornweld said that he recognized him by his voice. Cornweld said that he identified the appellant after Davis had pointed the appellant out to the police. (Tr. 17, 18, 33, 50-52, 67).

Detective Sergeant Ancel Dolinger testified that he and his partner, Detective Samen, arrived on the scene at 1324 Monroe St. N. W., on August 11, 1962, at about 4:15 or 4:30 p.m. He talked with both Mr. Davis and Mr. Cornweld. (Tr. 70-71). After talking with Davis and Cornweld they cruised the area and cruised back in front of the apartment building at about 5:45 p.m. At that time they were called by Mr. Davis, and as a result of talking to Mr. Davis they arrested the appellant who was standing in front of 1341 Monroe Street talking with four or five other people. Mr. Davis and Mr. Cornweld both identified the appellant at the time of his arrest. (Tr. 72, 73, 77).

Detective Charles Samen testified that after appellant was arrested which was about 5:45 p.m. the appellant was taken back to the robbery squad. Samen said that in his presence a photograph was taken at about 7 or 7:15 p.m. by the identification bureau and he gave that photograph to the prosecutor (Tr. 82-83). At that point defense counsel told the court that he thought the photograph was corroborative of what had already taken place, and what the witnesses had already given, and said that he believed it would prejudice the appellant's case. The court stated that it might be corroborative but the court thought it was admissible (Tr. 84). The prosecutor moved the photograph into evidence. The court said that there being no objection it would be received. There was no objection and the photograph was received into evidence. Detective Samen said the photograph represented the appellant's physical appearance at the time he was arrested (Tr. 85).

Othello Epps, appellant's mother testified in his behalf. She said that she had not seen the appellant for a long time and was getting ready to put him on the missing persons list when she found out that he was in jail (Tr. 90). After talking to the appellant in jail she went to visit Mr. Cornweld. She said that Mr. Cornweld told her that he did not know her son, and did not know who robbed him, and that his friend Bobby said that it was her son who was one of the robbers. (Tr. 92-93). Mrs. Epps said that she did not visit Mr. Davis after learning that it was he who said that appellant had robbed Mr. Cornweld. She hadn't seen the appellant for months before seeing him in jail and did not know where he was living on August 11, 1962 (Tr. 93).

Defense counsel mentioned to the court that he should have made a motion for a directed verdict at the close of the government's case. The court denied the motion stating that there were sufficient facts for the case to go to the jury. (Tr. 94).

Appellant testified in his own behalf. When the police apprehended him he told them that he was there to see a fellow by the name of Swifty about a job and Swifty wasn't home (Tr. 96). The officers told the appellant that they wanted him for robbery and he told them that they had the wrong man. The officers questioned some of the people in the neighborhood including the girl with whom appellant had spent the night (Tr. 97). Appellant told the police he didn't commit any robbery, and they said that he did and wanted to know where his buddy was. Appellant said that when Mr. Cornweld was asked if appellant was the man who robbed him, Cornweld said that he didn't know and that the robber had a Spanish accent (Tr. 98). When appellant arrived at police headquarters his photograph was taken (Tr. 99). Appellant said he is five feet six inches tall (Tr. 100). At 3:00 p.m. on August 11, 1962 he was coming from Fairmount Street where he had been drinking with some guys. He arrived at Switfy's at about 20 minutes to 4:00 and had been there about 35 minutes when the police arrived. (Tr. 101). Appellant was wearing a blue shirt, black pants and a pair of tennis shoes at the time he was arrested, and he said that he was wearing them all that day (Tr. 102). Appellant said that he had a processed hairdo and no mustache at the time of his arrest (Tr. 104). He said that he didn't speak any foreign languages (Tr. 105). On cross examination appellant stated that he was 26 years old, did not have a job on August 11, 1962, and had no money on that date (Tr. 106). He had been convicted of burglary in 1957, carrying a deadly weapon in 1960, and simple assault in 1961 (Tr. 107-108). Appellant did not know Swifty's last name nor his address but he knew where his house was on Monroe Street (Tr. 108). None of the people appellant was talking with when he was arrested were in court. Appellant said that they had moved away from where they were staying. (Tr. 110). Appellant had been drinking all day long on August 11, and his friends had been buying all of his drinks (Tr. 111, 112).

Defense counsel then asked the appellant several questions concerning the whereabouts of people whose names appellant had mentioned. Defense counsel told the court that the reason for these questions was that he was unable to locate any of those people and they were known only by nicknames. Appellant said that he had given a man from the Legal Aid Agency some names and addresses but it turned out that they were incorrect. (Tr. 113-117).

A motion for a directed verdict of acquittal was denied (Tr. 118).

The jury retired to deliberate at 10:50 a.m. on December 18, 1964, and returned a verdict of guilty 55 minutes later (Tr. 129).

STATUTE INVOLVED

Title 22, District of Columbia Code, Section 2901, provides:

> Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years.

SUMMARY OF ARGUMENT

Appellant's photograph which was taken at the time of his arrest was introduced at trial through a detective who was present at the time the photograph was taken. The detective testified as to the time place, and circumstances in which the photograph was taken. The court did not abuse its discretion in deciding there was sufficient authenticity to admit the photograph. Any impropriety whatsoever was certainly cured by the detective's subsequent testimony that the photograph represented the appellant's physical appearance at the time of his arrest.

There was testimony showing that appellant had long hair and no mustache at the time of his arrest which was just a short time after the robbery, however at trial appellant had short hair and a mustache. The admissibility of a photograph in such a situation is beyond question, and is not a violation of an accused's constitutional rights. The appellant fails to show how the use of the photograph was prejudicial to him. In any event there was only a general objection before the photograph was introduced, and no objection when it was offered into evidence, and it is not now grounds for error.

The appellant fails to show that he was prejudiced by his arrest without a warrant. There were no motions to suppress any of the evidence and no record specifically involving the issue of probable cause. However, it is quite evident from the record as it is that a full description of the robbery and the appellant by the complainant and an eyewitness, followed by a positive identification of the appellant by the eyewitness, gave the arresting officer substantial probable cause for the appellant's arrest.

The government's evidence established every element of robbery and there were two positive identifications of the appellant as being one of the robbers. The appellant's argument on insufficiency of the evidence is without merit.

ARGUMENT

I. Appellant's photograph was properly admitted into evidence.

(See Tr. 11, 48, 82-85, 104)

A photograph is admissible when it is shown to be a correct likeness of the persons or objects which it purports to represent. The photographer is not the only witness competent to prove the likeness. On the contrary, that fact may be shown by the testimony of any witness familiar with the original of the object which the photograph portrays. *Barney* v. *Staten Island Rapid Transit Railway*

Company, 316 F.2d 38, 43 (3d Cir. 1963); *Kortz* v. *Guardian Life Ins. Co.*, 144 F.2d 676, 679 (10th Cir. 1944), *cert. denied*, 323 U.S. 728; *Boyle* v. *Ward*, 39 F.Supp. 545, 548-549 (D.C.M.D. Pa. 1941), *aff'd* 125 F.2d 672 (3d Cir. 1942). 3 Wigmore Evidence § 792(3), 793, 794 (3d ed 1940).

Detective Charles Samen testified that after appellant was arrested at approximately 5:45 he and his partner took the appellant to the robbery squad. At about 7:00 or 7:15 p.m. a photograph was taken of the appellant by the Identification Bureau, Police Headquarters, in Detective Samen's presence. Detective Samen produced that photograph at trial, along with a photo viewer. (Tr. 82-83). The photograph and photo viewer were received into evidence (Tr. 85).

The question of whether authenticity of a document has been sufficiently proved *prima facie* to justify its admission rests in the sound discretion of the trial judge. *Arena* v. *United States*, 226 F.2d 227 (9th Cir.), *cert. denied*, 350 U.S. 954 (1955). In this case the Detective was qualified by observation to speak of the matter represented in the picture and he testified as to the time, place and circumstances in which the photograph was taken. It was not an abuse of discretion to allow the photograph into evidence. Any error whatsoever was certainly cured by the detective's testimony immediately following the admission of the photograph that it represented the appellant's physical appearance at the time he was arrested. (Tr. 85).

Whether the admission of a photograph such as the one in this case violates an accused's constitutional right against self-incrimination was decided a long time ago by this Court in *Shaffer* v. *United States*, 24 App. D.C. 417 (1904). The facts in *Shaffer*, a capital case, were very similar to the facts in the present case concerning the admissibility of a photograph. There was evidence in the *Shaffer* case tending to prove that prior to the homicide the accused wore no beard, that he wore no beard when a photograph was taken of him at the police

station, but that during the trial, he wore a full beard. In affirming the conviction which carried a death penalty this Court said that there had been no pretense that there was excessive force or illegal duress employed to take the picture, and the use of the picture at trial was not a violation of any constitutional right. See also *United States* v. *Amorosa*, 167 F.2d 596 (3d Cir. 1948); *United States* v. *Nesmith*, 121 F.Supp. 758 (1954).

The fact that photographic evidence may be cumulative is not alone ground for its rejection. *Potts* v. *People*, 114 Colo. 253, 158 P.2d 739 (1945). The value of the use of a photograph as a witness' pictured expression of the data observed by him and a more accurate reflection than words is sanctioned beyond question. *Shaffer* v. *United States*, *supra;* 3 Wigmore Evidence § 792 (3d ed. 1940). There was testimony in the instant case that the appellant had long hair and no mustache at the time of the robbery and when he was arrested, however, at trial the appellant had short hair and a mustache. (Tr. 11, 48). In fact, the appellant himself took the stand and testified that he had a processed hairdo, and no mustache at the time he was arrested (Tr. 104). In view of the testimony and what the photograph represented, the appellant fails to show any prejudice by the use of the photograph.

In any event the only objection by defense counsel to the use of the photograph was a general objection before the prosecutor had moved the photograph into evidence, and that was based on the grounds that the photograph was corroborative of what had already taken place, and what the witness said. Defense counsel believed it would prejudice appellant's case. The court replied that it might be corroborative but admissible. At that time the prosecutor offered the photograph into evidence. The court said that there being no objection it would be received (Tr. 84-85). There was no objection, and it is not now grounds for reversal. *Thomas* v. *United States*, 106 U.S. App. D.C. 5, 268 F.2d 581 (1959); *Lawson* v. *United States*, 101 U.S. App. D.C. 332, 248 F.2d 654 (1957).

II. There was sufficient probable cause for appellant's arrest without a warrant.

(See Tr. 4-7, 10-11, 15-18, 25, 33, 41-43, 45-47, 50-52, 59, 67-68, 84-85)

Appellant contends that he was unlawfully arrested without a warrant because the arresting officer had no probable cause to believe that he had committed a felony. However, appellant fails to show how he was prejudiced by the arrest. There were no motions to suppress any of the evidence. The only tangible evidence actually introduced at trial was appellant's picture (slide) which was taken at the time of his arrest, and a slide viewer. There was a general objection to the use of the picture on the grounds that it was merely corroborative, however, the picture eventually was received into evidence without objection (Tr. 84-85).

Assuming *arguendo* that the picture was taken illegally, it is not grounds for reversal where no motion was made for suppression of the picture, no objection was taken to its admission and no foundation laid for such motion or objection. *Thomas* v. *United States, supra; Lawson* v. *United States, supra.*

Even giving appellant the benefit of a motion which was never made, there was sufficient probable cause to uphold the arrest as lawful in this case. Both the complainant Mr. Charles Cornweld and an eyewitness Mr. Robert Davis saw the appellant wearing a silk stocking mask which partially covered his face during the robbery. Appellant's accomplice was a tall brown-skinned boy who had heavy eye lashes and a heavy mustache (Tr. 4-7, 10-11, 41-43, 68). About ten minutes after seeing the robbery, Mr. Davis who was able to leave the building just as the robbery commenced again saw the appellant (who had taken off his stocking cap) and his accomplice as they were coming out of the side street exit of the complainant's apartment building (Tr. 45-47). Mr. Cornweld called the police and they responded to the scene within

five minutes (Tr. 15). Mr. Cornweld and Mr. Davis described to the arresting officer what had happened concerning the robbery (Tr. 16-17, 25, 33, 50, 59). Cornweld and Davis were talking to the officers in front of Cornweld's apartment building about two and one half hours after the robbery and were discussing the robbery when Davis saw the appellant across the street. Davis identified the appellant as one of the robbers and pointed him out to the arresting officer (Tr. 17-18, 33, 50-52, 67). At this point there was probable cause for the officers to believe that a felony had been committed and the appellant was one of those who had committed it. One of the officers went over to the appellant and asked him a few questions, after which the officer and appellant both came back across the street where Mr. Cornweld also positively identified the appellant as being one of the robbers (Tr. 33).

Probable cause exists where "the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed. *Brinegar* v. *United States*, 338 U.S. 160, 175 (1949). If the circumstances existing at the moment of arrest, considered in their entirety, would impress on the mind of a prudent and cautious police officer a reasonable belief that a crime has been, is being, or is about to be committed, the arrest is deemed lawful. *Dixon* v. *United States*, 111 U.S. App. D.C. 305, 306-307, 296 F.2d 427, 428-429 (1961); *Ellis* v. *United States*, 105 U.S. App. D.C. 86, 88, 264 F.2d 372, 374 (1959), *cert. denied*, 359 U.S. 998; *Bell (Rhinelda)* v. *United States*, 102 U.S. App. D.C. 383, 387, 254 F.2d 82, 86 (1958), *cert. denied*, 358 U.S. 885.

Certainly a detailed description of a robbery and a positive identification by an eye witness less than three hours after the crime, such as occurred in the instant case, is at least sufficient probable cause for a reasonable

police officer to arrest that man who is identified as the robber.

This case is similar to *Payne* v. *United States*, 111 U.S. App. D.C. 94, 294 F.2d 723, *cert. denied*, 368 U.S. 882 (1961), where this Court held that there was probable cause when officers arrested a defendant as he was attempting to leave in an automobile after a citizen had pointed him out as the principal culprit in an attempted "flim flam." See also *Paris* v. *United States*, 116 U.S. App. D.C. 112, 321 F.2d 378 (1963).

III. The evidence was sufficient to sustain the verdict.

(See Tr. 4-12, 17-18, 25, 33, 41-43, 45-48, 50-52, 59, 67-68, 72)

Appellant argues that the government's evidence was insufficient to make a prima facie case. The government's evidence revealed that the appellant and a tall boy who was his accomplice came to the complainant's apartment. Appellant was wearing a stocking mask which partially covered his face and pointed a revolver at the complainant. Appellant demanded money and ordered his accomplice to take a ten dollar bill and a quarter from the complainant's table inside of the apartment, which was done. The appellant then demanded more money and threatened the complainant. (Tr. 4-12). An eyewitness Mr. Robert Davis was just leaving the complainant's apartment when the appellant and his accomplice arrived. Mr. Davis continued on out of the apartment building but he had been able to get a good look at the appellant and heard the appellant demand money from the complainant (Tr. 41-43, 68). About ten minutes after Mr. Davis left the complainant's apartment, he saw the appellant (who had removed the stocking mask) and his accomplice as they were leaving through the side exit of the complainant's apartment building (Tr. 45-47). Appellant was wearing a processed hair-do and had no mustache (Tr. 48). The police responded to the complainant's call and the complainant and Mr. Davis described what had happened (Tr.

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The principles by which the legal sufficiency of evidence in criminal cases is tested on appeal require that a judgment of conviction be sustained, if, taking the view most favorable to the government and giving full play to the right of the jury to determine credibility and draw justifiable inferences of fact, a reasonable man might fairly conclude guilt beyond a reasonable doubt. *Glasser* v. *United States*, 315 U.S. 60 (1942); *Curley* v. *United States*, 81 U.S. App. D.C. 389, 160 F.2d 229, *cert. denied*, 330 U.S. 837 (1947); *Morton* v. *United States*, 79 U.S. App. D.C. 329, 147 F.2d 28, *cert. denied*, 324 U.S. 875 (1945). Applying these standards it is evident that the testimony of the government's witnesses was quite sufficient to support the conviction of robbery. Appellant's argument is without merit.

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Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

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